

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

August 8, 1980

Feldman Wood Products Co., Inc.
One Herricks Rd.
Garden City Park, NY 11040

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Irving L. Baumwald
Elmer, Fox, Westheimer & Co.
500 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Feldman Wood Products Co., Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Corporation Franchise Tax :
under Article 9-A of the Tax Law
for the Years ending 12/31/72 & 12/31/73. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of August, 1980, he served the within notice of Decision by certified mail upon Feldman Wood Products Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Feldman Wood Products Co., Inc.
One Herricks Rd.
Garden City Park, NY 11040
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
8th day of August, 1980.

Deborah A. Bank

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Feldman Wood Products Co., Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9-A of the Tax Law :
for the Years ending 12/31/72 & 12/31/73. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of August, 1980, he served the within notice of Decision by certified mail upon Irving L. Baumwald the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Irving L. Baumwald
Elmer, Fox, Westheimer & Co.
500 Fifth Ave.
New York, NY 10036

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
8th day of August, 1980.

Deborah C. Burke

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FELDMAN WOOD PRODUCTS CO., INC.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Franchise Tax on Business	:	
Corporations under Article 9-A of the Tax	:	
Law for the Years Ended December 31, 1972	:	
and December 31, 1973.	:	

Petitioner, Feldman Wood Products Co., Inc., 1 Herricks Road, Garden City Park, New York 11040, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years ended December 31, 1972 and December 31, 1973 (File No. 15112).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 19, 1977 at 9:25 A.M. Petitioner appeared by Elmer Fox, Westheimer & Co. (Irving L. Baumwald, CPA, of counsel). The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether an instrument known as a banker's acceptance should be included in investment capital rather than business capital.

FINDINGS OF FACT

1. Petitioner, Feldman Wood Products Co., Inc., timely filed corporation franchise tax returns under Article 9-A of the Tax Law for the tax years ended December 31, 1972 and December 31, 1973.

2. On October 15, 1975, the Corporation Tax Bureau issued a Notice of Deficiency against petitioner for 1973 in the amount of \$3,416.57, plus interest of \$539.28, for a total allegedly due of \$3,955.85.

3. On June 16, 1975, a Statement of Tax Reduction or Overpayment was issued to petitioner by the Corporation Tax Bureau for the year ended December 31, 1972. It stated that Feldman Wood Products Co., Inc. had overpaid the franchise tax due by \$1,210.00. With interest on the overpayment, the credit to 1973 franchise tax was stated to be \$1,414.43.

4. In statements of audit adjustment for the years 1972 and 1973, the Corporation Tax Bureau explained that bankers' acceptances were eliminated from investment capital, since they were considered business capital for New York State franchise tax purposes. The interest income from bankers' acceptances was excluded from investment income and taxed at the business allocation percentage, which was 100 percent to New York State.

5. A banker's acceptance is created when a bank agrees to pay a draft drawn on it at a specified future date. A draft bearing such a commitment by a prime bank becomes a marketable instrument which, when offered for sale at an appropriate discount from the face amount of the draft is an attractive short-term investment for a corporation or other holder of temporarily excess funds. (See: The Financing of Exports and Imports: A Guide to Procedures, Morgan Guaranty Trust Co. of New York, 1973, pp. 24-26, petitioner's Ex. #2.) The due date of the draft is usually from 5 to 60 days from its drawing.

6. A draft is an order from one person or party to another, directing the payment of a sum of money; on the other hand, a note is a written or printed paper acknowledging a debt and promising payment. Bankers' acceptances are drafts.

7. Petitioner did not receive payment in 1972 or 1973 for goods or services in the form of bankers' acceptances. Petitioner made occasional purchases of bankers' acceptances and of stocks and bonds to earn income.

CONCLUSIONS OF LAW

A. That the term "investment income" means income from investment capital (section 208.6 of the Tax Law).

B. That the term "investment capital" is defined in section 208.5 of the Tax Law as follows:

"The term 'investment capital' means investments in stocks, bonds and other securities, corporate and governmental, not held for sale to customers in the regular course of business..."

C. That in section 3.31(c) of the regulations in effect during the years at issue (Ruling of State Tax Commission with Respect to the Franchise Tax on Business Corporations, March 14, 1962), it was provided that the term "other securities" does not include corporate obligations not commonly known as securities, such as real property or chattel mortgages, contracts of sale, purchase money obligations, short-term notes, bills of lading, bills of exchange and other commercial instruments. Bankers' acceptances being drafts, clearly are excluded from the category "other securities", since the word "draft" is the common term for a bill of exchange. (Black's Law Dictionary, Fourth Revised Edition). It is noted that the current regulation section on this point adds the term "bankers' acceptances" to those listed in 3.31(c) as being excluded from the category "other securities" (20 NYCRR 3-4.2(c), effective for taxable years beginning on or after January 1, 1976). Accordingly, bankers' acceptances are to be included in business capital rather than investment capital.

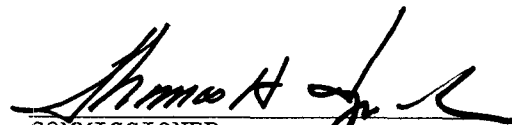
D. That the petition of Feldman Wood Products Co., Inc. is denied and the Notice of Deficiency dated October 15, 1975, is sustained.

DATED: Albany, New York

AUG 08 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER